SB Civil Writ Petition No. 308/98
Ram Karan & Another Vs. Rajasthan Public Service Commission

18.7.2006

Hon'ble Mr. Justice KS Rathore

Mr. RK Mathur, for the petitioners.
Mr. SN Kumawat, for the respondents.

The grievance of the petitioners is that their candidature has been rejected by the respondent without allowing them to compete in view of the circular issued by the Government dated 15.4.1996 holding that both the petitioners come within the purview of creamy layer and as such they cannot be given benefit of reservation being the member of other backward class.

Learned counsel for the petitioners submits that both the petitioners applied for the post of Assistant Engineer (Civil/Mechanical/Electrical) pursuant to the advertisement issued in the year 1997 and out of 58 posts for mechanical engineer, 29 posts were kept for general candidates, 9 posts of SC, 7 posts for ST and 13 posts for O.B.C. Since the candidature of the petitioners was not considered as OBC in view of the Circular dated 15.4.96, the petitioners have been held as persons who come within the purview of circular. And

considering the circular the candidature of the petitioners was not considered under the category of other backward class and vide order impugned dated 27.9.97 it was notified that the petitioners come within the purview of creamy layer and as such they cannot be given benefit of reservation and the candidature of the petitioners was treated as a general category.

Per contra, learned counsel for the respondents submits that the state government issued an advertisement on 18.1.97 for the post of Assistant Engineers under the rules of Rajasthan State Engineering Services (Direct Recruitment by Combined Competitive Examination) Rules, 1991and the petitioners also applied in response to the advertisement and both were provisionally allowed to appear in the examination held on 24.6.97 to 26.6.97. And since the selection process is completed no relief can be given to the petitioners and further submits that the state government has issued the circular for providing reservation to the OBC candidates according to which the person falling under creamy layer is not entitled for the benefit of reservation, as such the candidature of the petitioners was considered as a general candidates which the petitioners have accepted and appeared for interview where

they remained unsuccessful.

It is also stated that Hon'ble the Supreme Court in the case of “Indira Sawhney” has given a mandate that the State Government can provide reservation to the OBCs even vide Executive Instructions, and the instructions issued by the state government vide notification dated 15.4.96 is in the interest of justice to provide the benefit to the OBC category but the person falling in the creamy layer are not entitled to get the benefit of it.

Having considered the submissions advanced on behalf of the parties and upon careful perusal of the notification dated 15.4.96 and the impugned letter dated 27.9.97, the main grievance of the petitioners is that they should outrightly be considered under the category of OBC without putting them in the category of creamy layer. It is not the case of the petitioners that they have not been considered in their category. The petitioners were considered against the category of OBC but the benefit of this category cannot be given to the petitioner as per the circular dated 15.4.96 and thus the petitioners were informed vide letter dated 27.9.97 that their suitability has been adjudged pursuant to the Circular dated 15.4.96 and as per the circular they fall in the category of

creamy layer therefore, the benefit of OBC was not given and their results were declared considering them in the general category and the petitioners appeared in the interview as being the general category candidate without any protest and declared unsuccessful and preferred this writ petition for which the petitioners are estopped to challenge the selection process as they appeared in the interview knowing this fact that they can only be considered in the general category and not in the OBC category.

Consequently, I find no merit in the writ petition being devoid of merit which hereby fails and is dismissed as such.

(KS RATHORE), J.